

806 KAR 12:010. Advertising.

RELATES TO: KRS 304.12-010, 304.12-060, 304.12-120, 304.12-130

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Executive Director of Insurance shall make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation clarifies the minimum standards for advertising as set forth in KRS 304.12-010 and 304.12-020.

Section 1. (1) An advertisement for the purpose of the advertisement regulations shall include:

- (a) Printed and published material and descriptive literature of an insurer used in newspapers, magazines, radio and TV scripts, billboards and similar displays; and
- (b) Descriptive literature and the sales aids of all kinds issued by an insurer for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and
- (c) Prepared sales talks, presentations and material for use by agents and brokers, and representations made by agents and brokers in accordance therewith.

(2) Policy for the purpose of the advertisement regulations shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides accident or sickness benefits or medical, surgical or hospital expense benefits, whether on a cash indemnity, reimbursement, or service basis, except when issued in connection with another kind of insurance other than life, and except disability and double indemnity benefits included in life insurance and annuity contracts.

(3) Insurer for the purpose of the advertisement regulations shall include any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds, fraternal benefit society, and any other legal entity engaged in the advertisement of a policy as herein defined.

Section 2. The advertisement regulations shall apply to agents and brokers to the extent that they are responsible for the advertisement of any policy.

Section 3. (1) Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases the meaning of which is clear only by implication or by familiarity with insurance terminology shall not be used.

(2) Words, phrases, or illustrations shall not be used in a manner which misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered or premium payable. An advertisement relating to any policy benefit payable, loss covered or premium payable shall be sufficiently complete and clear as to avoid deception or the capacity and tendency to deceive, to wit:

(a) The words and phrases "all," "full," "complete," "comprehensive," "up to," "as high as," "this policy will pay your hospital and surgical bills," or "this policy will replace your income," or similar words and phrases shall not be used so as to exaggerate any benefit beyond the terms of the policy, but may be used only in such manner as fairly describes such benefit.

(b) A policy covering only one (1) disease or a list of specified diseases shall not be advertised so as to imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact.

(c) The benefits of a policy which pays varying amounts for the same loss occurring under different conditions or which pays benefits only when a loss occurs under certain conditions shall not be advertised without disclosing the limited conditions under which the benefits referred to are provided by the policy.

(d) Phrases such as "this policy pays \$1,800 for hospital room and board expenses" are incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

(3) When an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or specific policy benefit or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive; to wit:

(a) The term "exception" shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of risk not assumed under the policy.

(b) The term "reduction" shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction clause not been used.

(c) The term "limitation" shall mean any provision which restricts coverage under the policy other than an exception or a reduction.

(d) When a policy contains a time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement shall disclose the existence of such periods.

(e) An advertisement shall disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. When a policy does not cover losses traceable to preexisting conditions no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This limits the use of phrase "no medical examination required" and phrases of similar import.

Section 4. An advertisement which refers to renewability, cancelability, or termination of a policy, or which refers to a policy benefit, or which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, shall disclose the provisions relating to renewability, cancelability and termination and any modification of benefits, losses covered or premiums because of age or for other reasons, in a manner which shall not minimize or render obscure the qualifying conditions.

Section 5. All information required to be disclosed by the advertisement regulations shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

Section 6. Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertising and be accurately reproduced. The insurer, in using a testimonial makes as its own all of the statements contained therein, and all the advertisement including such statements is subject to all of the provisions of the advertisement regulations.

Section 7. An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not be used unless it accurately reflects all of the relevant facts. Such advertisement shall not imply that such statistics are derived from the policy advertised unless such is the fact.

Section 8. An offer in an advertisement of free inspection of a policy or offer of a premium refund

is not a cure for misleading or deceptive statements contained in such advertisement.

Section 9. (1) When a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits.

(2) When an advertisement refers to various benefits which may be contained in two (2) or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

Section 10. An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely disparage competitors, their policies, services or business methods.

Section 11. (1) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond these limits.

(2) Such advertisements by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of some language such as "This company is licensed only in State A" or "This company is not licensed in State B."

Section 12. The identity of the insurer shall be made clear in all of its advertisements. An advertisement shall not use a trade name, service mark, slogan, symbol or other device which has the capacity and tendency to mislead or deceive as to the true identity of the insurer.

Section 13. An advertisement of a particular policy shall not state or imply that prospective policyholders become group or quasi-group members and as such enjoy special rates or underwriting privileges, unless such is the fact.

Section 14. An advertisement shall not state or imply that a particular policy or combination of policies is an introductory, initial or special offer and that the applicant will receive advantages by accepting the offer, unless such is the fact.

Section 15. (1) An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency, unless such is the fact.

(2) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association or other organization, unless such is the fact.

Section 16. An advertisement shall not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy.

Section 17. An advertisement shall not contain statements which are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age or relative position in the insurance business.

Section 18. (1) Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed pub-

lished or prepared advertisements of blanket, franchise and group policies hereafter disseminated in this or any other state whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to regular and periodical inspection by this office. All such advertisements shall be maintained in said file for a period of not less than three (3) years.

(2) Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of the advertisement regulations must file with this office together with its annual statement, a certificate executed by an authorized officer of the insurer wherein it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws of this state as implemented and interpreted by the advertisement regulations. It is requested that the chief executive officer of each insurer to which the advertisement regulations are addressed acknowledge its receipt and indicate its intention to comply therewith.

Section 19. (1) The purpose and intent of this administrative regulation is to prohibit the transmission of information in the form of advertisements or otherwise which might be deceptive, misleading or untrue. The general intent, therefore, and the provisions of this administrative regulation not expressly limited to a particular type of insurance, shall be applied to all insurance on subjects of risk located in or to be performed in this state.

(2) The use of advertising material previously filed with and approved by the office shall not subject the filer to any disciplinary action or penalty by this office, as long as such prior approval remains in effect.

(3) Any person, firm, corporation, or association who knowingly aids and abets an insurer in the violation of this administrative regulation or the applicable provisions of the Insurance Code shall be subject to the penalties provided by law. (I-12.02; 1 Ky.R. 863; eff. 5-14-75; TAm eff. 8-9-2007.)